

ARIZONA

REAL ESTATE BULLETIN

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Broker Clinic requirements changed

Substantive Policy Statement No. 4, which describes the requirements for brokers to attend a Broker Management Clinic (formerly called the Broker Audit Clinic), has been revised. Here is the new Statement:

Substantive Policy Statement No. 4
Description of Practice/Procedure:

1. Each new real estate broker licensee must attend a broker management clinic within 90 days of original licensure as a broker.

2. Each associate real estate broker licensee who changes status to designated real estate broker must attend a broker management clinic within 90 days of the status change, unless the broker has taken the course within the current license period.

3. Each designated (including self-employed) real estate broker must attend a broker management clinic once every two year licensing period.

An Order will be issued summarily suspending the real estate license of any broker who has not attended a management clinic, with a copy of the Order mailed to the licensee's employing broker, if employed.

A broker whose license has been suspended for non-compliance may (1) request a hearing on the suspension or (2) demonstrate compliance, in which case the Commissioner will vacate the suspension and the broker may reinstate the license pursuant to A.R.S. § 32-2131(A).

This enforcement action will be stayed through December 31, 2000 if broker's non-attendance was because the classes were already full.

A committee has been formed to de-

Brokers may store records off-site

Real estate statutes requires licensees to retain certain records in a main or branch office. Other records may be kept on-site or at an appropriate off-site location in this state. To make things even more confusing, the statutes do not specify the storage location for some records.

The Department is drafting legislation to be introduced at the next session of the Legislature, subject to the Governor's approval, which will establish a consistent requirement for

record storage. Meanwhile, the Department will permit any records to be retained off-site in Arizona provided the broker informs the Department of the location.

If you are a broker and wish to store records off-site, send a letter providing the address of your off-site storage location to:

Lynda Gottfried, Audit Supervisor
ADRE
400 W. Congress, Suite 523
Tucson AZ 85701

CE courses now available on Internet

The Hogan School of Real Estate in Tucson will present the first distance-learning courses approved by the Arizona Department of Real Estate for continuing education credit.

The subject areas are agency law, fair housing, real estate exchanges, math, basic finance, methods of residential financing, pricing property, and tax advantages of home ownership. The courses have also been certified by ARELLO, the Association of Real Estate License Law Officials, for continuing education credit. School owner Jim Hogan is the approved instructor for the courses.

Beginning August 2, students may obtain the courses on floppy disks by mail, at the school or by downloading the courses from the school's Web site at www.hoganschool.com. For more information, contact the Hogan School

of Real Estate at 520-327-6849.

The courses were developed by Georgia-based Compu-Taught which has been developing educational software since 1987. The Georgia Real Estate Commission approved Compu-Taught to provide continuing education credit courses in 1989. Now, Compu-Taught real estate courses are offered for credit in more than 25 states directly or through local providers.

One advantage of computer-based learning is the licensee's opportunity to study course content which the student finds difficult to understand without fear of peer censure or ridicule.

An amendment to Commissioner's Rules R4-28-101 and R4-28-402, adopted May 2, 2000, made computer-based interactive programs possible. Other schools have submitted 38 applications for distance-learning course approval.

velop clinic curriculum and to establish instructor qualifications. It is not yet known which approved Arizona real estate schools will present Broker Management Clinics, but we expect to publish a list in the Arizona Real Estate

Bulletin before the last Department Broker Audit Clinic is presented in October.

All seats at Department Clinics through October have been reserved; no more space is available.

Understanding the Conditional Loan Approval

By Richard Blair

Reprinted, with permission, from the August 2000 edition of the Arizona Journal of Real Estate & Business

The new Residential Resale Real Estate Real Estate Purchase Contract has placed a greater significance on the lender's Conditional Loan Approval (CLA). It is important for the real estate professional to thoroughly understand how the Conditional Loan Approval works, as well as its practical limitations. In order to insure a smooth transaction, it is the responsibility of both the real estate professional and the borrower's professional mortgage consultant to educate the consumer throughout the transaction.

A close of escrow in Arizona requires that the borrower execute all documents, that the loan must be funded, and that the required legal documents are recorded. The biggest misconception is that the Conditional Loan Approval means that the Borrower is approved for a loan and that the lender is prepared to fund the loan. The CLA (Lines 29 & 30) clearly states that it is not a "final approval". It is important to remember that every loan will have conditions that must be satisfied. Conditions can be best understood by looking at the transaction as a timeline, and determining: when on that timeline the condition must be satisfied. Typically, satisfaction of conditions is divided into two categories, prior-to-loan documents and prior-to-funding documents.

The first category, prior-to-loan documents, are conditions that must be satisfied prior to the lender drawing the loan documents and delivering them to escrow. Practically speaking, every loan has conditions in this category that must be satisfied. In every transaction the lender must review the following items prior to drawing loan documents: the Preliminary Title Report, the appraisal, flood certification, and the Certificate of Hazard Insurance.

Remember, even though the borrower is "credit approved", the property also must meet investor guidelines. A CLA could be illusory if the property does not appraise for the sales price or if expensive property repairs are required. We could present examples for each of the standards prior to document conditions that would prevent a transaction from closing. I have experienced several occasions where a client was credit approved, but loan documents could not be drawn because of exceptions appearing on the preliminary title report, like a seller bankruptcy, or judgments or liens that essentially made the title unmarketable.

As you can see, even these standard, conditions are extremely important and could stop the real estate transaction dead in its tracks. Other conditions that you may encounter in this category could be asset and income verification, verification of employment, verification of rent history, and credit explanation letters. For example, the loan may be conditionally approved upon, the borrower having no prior late rent payments, but verification received after application states that the borrower has been more than 30 days late on several occasions. In this instance the borrower has failed to meet the conditions of the approval. Hopefully, you now see how important thoroughly explaining the meaning of the CLA to the seller and buyer is in every transaction.

In the second category, prior-to-funding, are conditions that may be satisfied after loan documents are drawn and delivered to escrow but before the lender funds the loan. Remember, if the loan does not fund, the transaction does not close! A very typical condition in this category is the requirement for the borrower to provide a copy of the HUD-1 Settlement Statement from the sale of a prior home. Other typical conditions may include a clear termite report, requiring the bor-

rowers to sign copies of documents previously provided to the lender like tax returns and explanation letters, payment of collections, or a final repair inspection.

Recently I received a call from a real estate broker who received a lender's CLA, but questioned how it could happen that the lender refused to fund the loan even though the borrower signed their loan documents. The explanation is that prior-to-funding conditions may include a requirement to show proof of funds required to close, or proof that a particular asset listed on the loan application was liquidated. In this example, the CLA was conditioned on verifying that gift funds were deposited into escrow. Prior to closing the buyer got into an argument with the gift donor who then refused to provide the gift money. The moral of the story is to carefully track the status of loan conditions with the lender to ensure that problematic conditions are cleared before your clients sign their loan documents.

Take advantage of the Purchase Contract (Line 60) and the provision in the CLA (Lines 24-26) that authorizes the lender to provide loan status updates to the Brokers. By carefully reviewing the CLA and understanding the two different categories of CLA conditions, you will now be prepared to ask the "right" questions when speaking with the lender. For example, instead of asking if the buyer is approved, you will now ask more detailed questions about the type of conditions and the timing for clearing those conditions.

Richard Blair is an owner of Professional Mortgage Associates, Ltd., and mortgage consultant specializing in residential mortgage loans. Richard is an attorney and a former Administrative Law Judge for the Arizona Department of Real Estate. You may contact him at 602-494-8991.

Free landlord and tenant workshops offered in Mesa

The Arizona Federation of Housing Counselors, Inc., will present a series of free Landlord and Tenant Workshops designed to define the benefits and responsibilities of landlords and tenants.

The workshops will be presented on September 20, October 18, No-

vember 15 and December 13 from 6 to 9 p.m. at Housing for Mesa, 251 W. Main Street in Mesa.

The workshops will cover the Arizona Residential Landlord and Tenant Act along with the new "Slum" Laws and will explore establishing a positive landlord/tenant

relationship.

Real estate licensees, landlords, tenants and social service staff are invited to attend. Real estate licensees will receive three hours of continuing education credit.

To make a reservation call 602-257-1715.



Jerry Holt

News From The Commissioner

A year ago, the idea of being able to complete continuing education courses in the comfort of your own home seemed a remote possibility. Now, thanks to amendments to the Commissioner's Rules, you may sign up for your first "distance learning" continuing education class on August 2.

The Hogan School of Real Estate in Tucson now offers eight courses, and other schools have submitted 38 courses for Department approval. We congratulate Jim Hogan on being the first to take advantage of this new technology.

As soon as courses submitted by other schools are approved, you'll read about them on our Late-Breaking News page at www.re.state.az.us.

On-Line Licensee Database

You're probably aware that you may view a list of active real estate licensees on our Web site, along with their employing brokers, business address, business telephone and type of license. But this list is updated only once a month; it is out of date the day it is posted.

We hope to have a dynamic database of licensee information available

on our Web site before the end of the year. This database will be updated the instant new information is entered into our computer system. The on-line information will be a replica of the actual database. It will not be possible for anyone to access confidential information or to change information in our computer. We believe this new service will be popular with licensees and consumers alike.

Somewhere down the line we hope to make it possible for you to renew your license and submit other transactions on-line. It may require an amendment to the real estate statutes to effect this change, and we will have to wait for the State to agree on a provider for such a service. We'll keep you informed.

Broker Management Clinics

You're aware, I'm sure, that Broker Audit Clinics presented by the Department for many years will be replaced, beginning in November, by Broker Management Clinics presented by approved real estate schools. I'm pleased to report that the Committee I formed to develop the Broker Management Clinic curriculum and instructor qualifications is doing its

job in a very expeditious manner.

The curriculum has been drafted and is being fine tuned. Prospective instructors will attend an Instructor Development Workshop on September 26 at Bill Gray's Arizona School of Real Estate & Business in Scottsdale, or on October 20 at Jim Marrion's Professional School of Real Estate in Glendale. Those who complete the workshop and pass an examination will be certified to teach Broker Management Clinics beginning November 1.

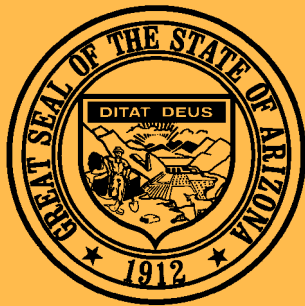
We will post a list of schools that will offer the Clinic on our Web site as soon as it is available.

Recuperation

For those of you who are interested, I seem to be recuperating from heart bypass surgery at about the pace my cardiologist expected. His "crack" diagnosis was, "you'll have some good days and you'll have some bad days."

He was right. I'm now enrolled in cardiac rehabilitation at Good Samaritan Hospital in Phoenix. The people there are really wonderful. I go three days each week and I believe it's really helping my recovery.

Hope to be back at work soon.



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2000 Schedule of Broker Audit Clinics

A.R.S. § 32-2136 requires all newly licensed real estate brokers to attend a Broker Audit Clinic presented by the Department within 90 days of issuance of their original broker's license. *Effective July 21, 1997, all designated real estate brokers must also attend a Broker Audit Clinic within 90 days after becoming a designated broker unless the broker has attended an audit clinic during the broker's current licensing period.* All designated brokers shall attend a broker audit clinic once during every four-year period after their initial attendance. (See note below.)

Seating is limited and reservations are required. To make a reservation for a Phoenix clinic, call the Department's Customer Services Division at (602) 468-1414, extension 100. In Tucson, call (520) 628-6940. Those who fail to make reservations will be turned away if seating is not available. Brokers who attend will receive three hours of continuing education credit in the category of Commissioner's Standards.

The following is the schedule of Clinics to be offered in Phoenix and Tucson during the remainder of 2000. All seats in these clinics have been reserved. No seats are available.

PHOENIX

Industrial Commission Auditorium
800 W. Washington

1 p.m. to 4 p.m.

August 17
September 21
October 19

TUCSON

State Office Building
400 W. Congress
Room 222

1 p.m. to 4 p.m.

August 16
September 20
October 18

Note: Beginning November 1, the Broker Audit Clinic will be known as the Broker Management Clinic pursuant to A.R.S. § 32-2136 and will be offered only by approved Arizona real estate schools. Effective July 18, 2000, all designated brokers are required to attend a Clinic *once during every two-year licensing period* after their initial attendance rather than once every four years as before. See story on page 1.

The mission of the
Arizona Department of Real Estate
is to safeguard and promote the public interest
through timely and capable assistance,
fair and balanced regulation,
and sound and effective education.

ADMINISTRATIVE ACTIONS

REVOCATIONS

00A-015

**Holley Hillcrest Memorial Gardens, and Mavis Daley, its President
Miami**

DATE OF ORDER: June 5, 2000

FINDINGS OF FACT: The Department summarily suspended the Certificate of Authority issued to Holley Hillcrest Memorial Gardens, Inc., also known as Holley Hillcrest memorial, also known as Mountain Breeze Memorial Gardens, Inc., on February 24, 2000 by mailing the order to the Respondent at the registered address. Mavis Daley responded using the company letterhead of Mountain Breeze Memorial Gardens, Inc., via fax on March 2, 2000.

Respondent has not filed a timely request for hearing.

It is ordered revoking the Certificate of Authority No. 22,464 to operate a cemetery in the State of Arizona issued to the above named entities.

SUMMARY SUSPENSIONS

C00-000163/00A-066

**Jeanette Joy Barbara
Chandler**

DATE OF ORDER: July 14, 2000

FINDINGS OF FACT: Respondent was originally issued a real estate broker's license on June 12, 1998. The license was renewed July 1, 2000. Respondent is a self-employed broker acting under her DBA, Southwest Realty.

The Department has received several complaints, and continues to receive complaints, against Respondent for monetary irregularities.

The Department audited Respondent's accounts and by her own admission, she has illegally transferred between \$21,000 and \$34,000 from her property management trust account into her general operating account and personal account.

VIOLATIONS: Respondent has committed acts in violation of A.R.S. § 32-2153. Pursuant to A.R.S. § 32-2157(B), the public welfare or safety imperative requires emergency action in this matter.

DISPOSITION: The real estate broker's license of Respondent is summarily suspended. Respondent may request an administrative hearing to contest this action by filing a Notice of Appeal within 30 days of Respondents' receipt of this notice.

CONSENT ORDERS

00A-041

**John C. Stevenson
Scottsdale**

DATE OF ORDER: June 9, 2000

FINDINGS OF FACT: In his application for an original real estate salesperson's license, Respondent failed to disclose a September 19, 1977 misdemeanor conviction in Cochise County Superior Court for exhibiting a deadly weapon other than in self-defense.

VIOLATIONS: Respondent's failure to disclose the conviction constitutes procuring or attempting to procure a license by filing an application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1). Respondent's conduct tends to show he is not a person of honesty, truthfulness or good character, within the meaning of A.R.S. § 32-2153(B)(7).

DISPOSITION: Respondent to pay a civil penalty in the amount of \$500.

99A-162

**Earlena June Lawrence
Mesa**

DATE OF ORDER: June 19, 2000

FINDINGS OF FACT: Respondent was the qualifying party as well as the president of Golden East Homes Sales, Inc., a seller of manufactured homes.

In her application for an original real estate salesperson's license, Respondent failed to disclose 10 orders entered by the Arizona Department of Building and Fire Safety against Golden East Home Sales, Inc., and revocation of her Class D-12 license by the Department of Building and Fire Safety.

VIOLATIONS: Respondent's actions tend to show she procured a license by filing an application which was false or misleading. Respondent violated the terms of an Administrative Order in violation of A.R.S. § 32-2153(B)(9).

DISPOSITION: Respondent's real estate salesperson's license is revoked.

00A-069

**Jenry Jacome
Tucson**

DATE OF ORDER: June 21, 2000

FINDINGS OF FACT: In his April 28, 2000 application for renewal of his real estate broker's license, Respondent disclosed an August 4, 2000 conviction in Pima County Justice Court for domestic violence/assault. Respondent did not advise the Department of the conviction within 10 days as required by A.A.C. R4-28-301(F).

VIOLATIONS: Respondent's failure to report the conviction as required by the Commissioner's Rule constitutes a violation of A.R.S. § 32-2153(A)(3). Respondent's conduct, which resulted in the conviction, is a violation of a federal or state law, regulation or rule that involves violence against another person within the meaning of A.R.S. § 32-2153(B)(10).

DISPOSITION: Respondent's real estate broker's license is suspended for 10 days beginning upon entry of this Order. Respondent to pay a civil penalty in the amount of \$300. Respondent to attend six hours of approved continuing education, in addition to hours required for license renewal, in the category of Commissioner's Standards.

00A-044

**Michael Higgins
Anthem**

DATE OF ORDER: June 26, 2000

FINDINGS OF FACT: In her September 22, 1999 application for an original real estate salesperson's license, respondent failed to disclose a October 20, 1993 conviction in Bonneville County, Idaho, for DUI.

VIOLATIONS: Respondent's failure to disclose the conviction constitutes procuring or attempting to procure a license by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1). His conduct tends to show he is not a person of honesty, truthfulness or good character within the meaning of A.R.S. § 32-2153(B)(7).

DISPOSITION: Respondent's real estate salesperson's license is suspended for 10 days to begin upon entry of this Order. Respondent to pay a civil penalty in the amount of \$1,500. Respondent to attend 15 hours of approved continuing education classes, in addition to hours required for license renewal, in the categories of Commissioners Standards, Contract Law and Legal Issues.

00A-032

**Kevin Talbot Russell
Glendale**

DATE OF ORDER: July 18, 2000

FINDINGS OF FACT: In his Rebruary 25, 1000 application for an original real estate salesperson's license, Respondent disclosed a September 9, 1998 conviction for DUI in Phoenix, an April 5, 1996 conviction for DUI in Adams County, Colo., and an April 16, 1993 conviction for DUI in Jefferson County, Colo.

VIOLATIONS: Respondent's misdemeanor convictions for DUI do not reflect that he is a person of good character within the meaning of A.R.S. § 32-2153(B)(7).

DISPOSITION: Respondent's application for a salesperson's license is approved, and the Commissioner shall issue Respondent a two-year provisional real estate license, effective July 18, 2000, provided he satisfies the following requirements:

1. Respondent shall abstain completely from the use of any alcohol, illegal drugs or controlled substances unless taken pursuant to a valid prescription and orders of a medical doctor.
2. Respondent shall submit to body fluid tests or breath tests, randomly drawn, not exceeding two per month, at the request of the Department's Compliance Officer. Any body fluid tests which test positive shall constitute grounds to summarily suspend Respondent's license.

00A-047

**Lloyd W. Kapiainen
Tempe**

DATE OF ORDER: July 18, 2000

FINDINGS OF FACT: In his June 17, 1999 application for a real estate salesperson's license, Respondent failed to disclose November 21, 1997 and May 28, 1998 convictions in Arapahoe County Court for driving under the influence/ability impaired (DWAI).

VIOLATIONS: Respondent's failure to disclose the conviction constitutes procuring or attempting to procure a license by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1). His conduct tends to show he is not a person of honesty, truthfulness or good character within the meaning of A.R.S. § 32-2153(B)(7).

DISPOSITION: Respondent's real estate salesperson's license is suspended for seven days to begin 10 days after entry of this Order. Respondent to pay a civil penalty in the amount of \$250. Respondent to attend 15 hours of continuing education classes, in addition to hours required for license renewal, in the categories of Commissioner's Standards, Agency Law and Real Estate Legal Issues.

00A-063

**Robert Arnold Gorman
Gilbert**

DATE OF ORDER: July 17, 2000

FINDINGS OF FACT: In his July 16, 1999 application for an original real estate salesperson's license, Respondent failed to disclose a March 31, 1993 conviction in Sacramento (Calif.) Superior Court for prostitution-agree to/overet act, a misdemeanor.

VIOLATIONS: Respondent's failure to disclose the conviction constitutes procuring or attempting to procure a license by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1). His conduct tends to show he is not a person of honesty, truthfulness or good character within the meaning of A.R.S. § 32-

Continued from page 5

2153(B)(7). He has been convicted of a felony or the crime of forgery, theft, extortion, conspiracy to defraud, a crime of moral turpitude of other like offense, within the meaning of A.R.S. § 32-2153(B)(2).

DISPOSITION: Respondent's real estate salesperson's license is suspended for 30 days to begin upon entry of this Order. Respondent to pay a civil penalty in the amount of \$500. Respondent shall attend six hours of approved continuing education classes, in addition to hours required for license renewal, in the categories of Commissioner's Standards, Contract Law or Real Estate Legal Issues.

00A-055**Jedediah D. McLin****Phoenix**

DATE OF ORDER: July 17, 2000

FINDINGS OF FACT: In his February 12, 1999 application for an original real estate salesperson's license, Respondent failed to disclose a February 11, 1993 DUI conviction, and an October 20, 1994 DUI conviction in Hawaii.

VIOLATIONS: Respondent's failure to disclose the conviction constitutes procuring or attempting to procure a license by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1). His conduct tends to show he is not a person of honesty, truthfulness or good character within the meaning of A.R.S. § 32-2153(B)(7). His failure to cooperate with the Department's investigator by providing additional

documents and information requested pursuant to A.R.S. § 32-2108(C) constitutes a violation of A.R.S. § 32-2153(A)(3).

DISPOSITION: Respondent's real estate salesperson's license is suspended for 45 days to begin upon entry of this Order. Respondent to pay a civil penalty in the amount of \$500. Respondent shall attend six hours of continuing education classes, in addition to hours required for license renewal, in the categories of Commissioner's Standards, Contract Law or Real Estate Legal Issues.

00A062**John Mack****Phoenix**

DATE OF ORDER: July 28, 2000

FINDINGS OF FACT: In his August 1999 application for an original real estate salesperson's license, Respondent failed to disclose a 1997 conviction for misdemeanor theft.

VIOLATIONS: Respondent procured a license by filing an original application which was false or misleading in violation of A.R.S. § 32-2153(B)(1). As a result of his conviction, he is in violation of A.R.S. § 32-2153(B)(2). His conduct tends to show he is not a person of honesty, truthfulness or good character within the meaning of A.R.S. § 32-2153(B)(7).

DISPOSITION: Respondent's real estate salesperson's license is suspended for a period of 20 days on entry of this order. Respondent to pay a civil penalty in the amount of \$500.

Don't wait until last minute to request continuing education waiver

Licensees who, for good reason, have not been able to obtain the required continuing education hours before license renewal, may request a conditional waiver from the Commissioner, and complete the required hours within a specified time after renewal.

If you wish to apply for a conditional waiver and have a good reason why you should be granted one, please try to do so two or three months before the expiration date of your license. Waiting until the last minute may delay your renewal and could result in expiration of your license.

You may obtain Form ADM 100, "Request for Conditional Waiver of Continuing Education," from our Web site at www.re.state.az.us/library.html, from our Fax Response Service (Document No. 3018), or by calling the Department at 602-468-1414, extension 100.

When submitting the form, be sure to indicate the number of continuing education credits you have obtained. Should you have any questions, call the telephone number above.

Advisory Board to meet September 21

The Arizona Real Estate Advisory Board has scheduled a public meeting from 10 a.m. until noon on Thursday, September 21, in the conference room at the Department's

Phoenix office, 2910 N. 44th Street.

The meeting agenda will be posted 24 hours in advance of the meeting in our Phoenix and Tucson Office, and on the Web at www.re.state.az.us.

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